THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.27622 OF 1996

Dated 17-04-2007

Between:

The Assistant Controller …Petitioner

And

The Income-Tax Appellate Tribunal
And two others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.27622 OF 1996

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

Heard learned counsel for the parties.

This is a writ petition against the order of the Income Tax Appellate Tribunal-the first respondent in ITA No.1911/Hyd/95. An appeal was filed by the Revenue before the Tribunal against the order of the Deputy Commissioner of Income-Tax (Appeals), Guntur, dated 29-09-1995. The Income-Tax authorities had levied interest under Section 201(1A) of the Income Tax Act, 1961 (for short "the Act") on the petitioner, which was reversed by the Deputy Commissioner of Income-Tax in appeal by the petitioner. Therefore, the Revenue filed an appeal before the Tribunal. The Tribunal allowed the appeal and restored the order of the Income-Tax authorities, which levied interest on the petitioner.

There is a short question involved in this writ petition, where facts are not at dispute.

The petitioner was required under law to deduct tax at source of its employees. It did not do so, and the deductions were made not on monthly basis but were made at the end of the year and were remitted

to the State annually. The case of the petitioner before the authorities was that there was no deliberate mistake committed. It was only a *bona fide* mistake, where they thought that they could make the deductions at the end of the year and then remit the amounts.

The violation of law is manifest, but whether such violation entitles the department to levy interest on the petitioner or not is the question.

Section 201(1A) of the Act reads as under-

> *(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at twelve per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of section 200.*

Section 201 of the Act itself deals with the consequences of failure to deduct or pay the tax. In case of penalty, the first proviso to Section 201 of the Act lays down that penalty can be imposed for not deducting the tax at source if the assessing officer is satisfied that without good and sufficient reasons the tax had not been deducted and paid. Whereas there is no rider to Section 201(1A) of the Act, which deals with charging of the tax with simple interest. Therefore, in our view, if the tax is not deducted at source, there is a discretion with the Assessing Officer in imposing the penalty and the conduct and intention of the Officer responsible for such deduction can be taken

into consideration, whereas for imposition of interest, there is no such discretion with the Assessing Officer and imposition of interest is mandatory. We find support in our views in a judgment of the Bombay High Court in ***Bennet Coleman & Co. Ltd v. V.P.Damle, Third Income-Tax Officer, T.D.S.Circle, Bombay and others***[1]

For these reasons, there is no merit in the writ petition, which is accordingly dismissed. No order as to costs.

(Bilal Nazki,J)

Dated 17th April, 2007

(Nooty Ramamohana Rao,J)

vrn

[1] 157 ITR 812 (Bombay)